

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

EXCEL EXTRUSIONS, INC.

Employer

and

INTERNATIONAL UNION OF ELECTRICAL
WORKERS, INDUSTRIAL DIVISION –
COMMUNICATION WORKERS OF AMERICA,
AFL-CIO, DISTRICT 7

Petitioner

Case 8-RC-16665

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of production and maintenance employees engaged in the manufacture of extruded and fabricated aluminum construction products, such as door and window frames. Petitioner contends that certain "specialists," also known as group leaders, are supervisors within the meaning of the Act and should be excluded from the unit. Based on the record and the relevant Board cases, I find that specialists are not supervisors and should be included in the unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board.¹ Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ This case was transferred to me pursuant to the Interregional Assistance Program for decision writing only. See Office of the General Counsel, Division of Operations Management Memorandum, OM 03-77 (May 15, 2003).

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The first part of this decision will be a summary of certain issues raised at the hearing but resolved by the parties' agreement by the time they submitted briefs, and a statement of the issue remaining for decision. Next will be a review of the Employer's operation and the background facts. Finally, I will review the legal principles in issue and apply them to the facts of this case.

Issues, Resolved and Unresolved

The parties stipulated at the hearing that temporary employees leased or referred from other employers, employment or contract agencies are excluded from the bargaining unit. See Oakwood Care Center, 343 NLRB No. 76 (Nov. 19, 2004) (joining employer with temporary employment contracting service creates multi-employer unit requiring agreement of the employers).

² The Employer, Excel Extrusions, Inc., is a Delaware corporation, and a wholly owned subsidiary of the Aluminum Company of America (Alcoa), with a place of business in Warren, Ohio, where it is engaged in production of soft aluminum alloy extrusions and the manufacture of extruded and fabricated construction products. Although the record does not contain specific evidence of the dollar amounts of business engaged in across state lines or of the Employer's gross revenues, the parties stipulated that the Board has jurisdiction, and I so find. See Aluminum Company of America, 338 NLRB No. 3 (2002).

At the hearing, Petitioner reserved its position on the appropriateness of including the ABS clerk, known on the Employer's payroll record as a grade 6 billing clerk, in the unit. ABS stands for Alcoa Business Systems. The evidence shows that the single person in that classification performs computer data entry regarding production statistics, generally recognized plant clerical functions. In its brief, the Union agrees to inclusion of this classification in the unit, and I find that appropriate.

In addition, Petitioner reserved its position on whether employees classified as leader (TAS) were appropriately included in the unit. TAS stands for temporary acting supervisor, which is basically self-explanatory. Any employee can acquire this designation when a department supervisor is on vacation or otherwise absent, although it generally goes to employees with more experience and skills. The Employer's uncontradicted evidence was that the designation does not confer any supervisory authority, but merely confers responsibility to monitor and report to a higher supervisor if there are any problems in a particular department, and a wage increment for that. In its brief, Petitioner agrees to inclusion of this classification in the unit, and I find that appropriate. Petitioner still contends that Diane Hilas, considered TAS by the Employer for over a year, should be excluded as a supervisor for reasons unrelated to the TAS designation, which I will address below.

The Employer asserts that all specialists have the same duties and responsibilities and should be included or excluded altogether. At the hearing, Petitioner contended that specialists Peggy (P.J.) Lowers, Diane Hilas, and Barb King at least are supervisors, and declined to commit to a position on the other specialists. In its brief, Petitioner stipulates that the other specialists, all employed in the extrusion

department, are not supervisors and should be included in the unit, but maintains that Lowers, Hilas, and King are supervisors. Accordingly, the status of Lowers, Hilas, and King is the only remaining issue.

The Employer's Operations

The Employer is a wholly owned subsidiary of the Aluminum Company of America (Alcoa). It is one of 10 similar Alcoa plants in North America, although there is no evidence of where the others are located. It employs about 200 rank-and-file, hourly paid employees and 50 salaried personnel, including managers and stipulated supervisors.

There are nine departments. Extrusion is where the basic frames are formed. From there, the frames go to one or more of the other departments – painting, fabrication, thermal and abridged, re-cut, packing, shipping, and die shop. The ninth department is maintenance. The lowest-ranked, stipulated 2(11) classification is department supervisor. Fabrication, packing, paint, abridging, and re-cut are combined and referred to collectively as the finishing area under a single department supervisor.

The "specialist" title was adopted across the board in April 2004. Before that time, the Employer's payroll called some or all of the same people "group leaders." Since then, some scheduling documents retain the group leader title, and employees still use the old title in conversation, but they are all "specialists" as far as the payroll is concerned.

There are specialists employed in the extrusion, fabrication, and shipping departments. The extrusion department has four shifts, A, B, C, and D. They work twelve hours, alternating two days on and two days off, for 24-7 coverage. Each shift

has a specialist and a crew of six or seven assigned to each of two presses, and a half dozen other "utility" employees on duty but not assigned to a specific press (except on D shift, the specialist line on one press is blank).

Lowers and Hilar are both listed on the schedule as group leader in fabrication, which operates one shift, 6 a.m. to 2 p.m. Fabrication conducts some specific punches and cuts on the material, primarily dedicated to a single customer. The department also includes one saw operator and four utility workers. The supervisor has been Red Fischer for the last couple weeks, Paul Rish for most of the relevant period.

King is listed on the schedule as group leader in shipping. She is assigned to work 6 a.m. to 3 p.m. That department also employs one shipping clerk, one truck driver, and five forklift operators 7 a.m. to 3:30 p.m.; one shipping clerk and one ABS clerk 10 a.m. to 6:30 p.m.; and one forklift operator 3:30 p.m. to midnight. The shipping supervisor is Nick Scuttillo.

Department supervisors and up are salaried, paid semi-monthly, and get a straight time "overtime supplement" for hours worked in excess of 40 in a week. The salary range for the front-line supervisors begins approximately at the straight-time rate of the highest paid production employee. The rank and file and specialists are paid an hourly wage, every two weeks, with time-and-a-half for hours worked in excess of 40 in a week.

Most of the rank and file job classifications (e.g., utility, saw operator, forklift operator, painter, press operator) start between \$8.25 and \$10.29 an hour. Specialists start at \$10.79 per hour. The only higher-paid, rank-and-file classifications are two (out of four) grades of maintenance mechanics (\$14.25 and \$15.57 per hour), "die shop

correctors" (duties not described) (\$12.93 - \$17.18 per hour), truck drivers (\$12.03 per hour), and "TAS" (Temporary Acting Supervisor) (\$11.32 per hour).

All hourly and salaried employees share the same vacation entitlements and the same suite of benefits. Specialists and hourly employees share the same quarterly bonus program based on a formula that takes into account production and safety problems, among other things.

Specialists lead a five-minute safety meeting at the start of each shift, at which they explain recent safety issues, describe any recent accidents, and ask for questions. They also state the day's production goals. Other employees occasionally lead the meetings. Only one was named, scale operator Debbie St. John. There is no evidence or contention that she was a supervisor.

Legal Principles and Application

To be excluded from a bargaining unit as a supervisor pursuant to Section 2(11) of the Act, a person must have

authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proof rests with the party asserting supervisory status. E.g., Queen Mary, 317 NLRB 1303, 1309 (1995), enfd. 113 F.3d 1242 (9th Cir. 1997).

Supervisory status is determined by duties and responsibilities, not titles or job classifications. E.g., Victoria Partners, 327 NLRB 54, 61 (1998). It doesn't matter if they are called specialists or group leaders. According to the Employer's witnesses, they all have the same responsibility to give other employees directions, to coordinate

their efforts in consultation with the department supervisors, and to make sure the work is getting done, the orders are moving along, deadlines and trucking schedules are being met, and materials and supplies are kept up. They are also expected to be able to perform all the jobs in their department and work them as needed. For purposes of the unit description, I will use the payroll designation "specialist" to refer to group leaders as well.

The Employer's witnesses testified that no specialist plays any role whatsoever in hiring. Department supervisors have exclusive authority for discipline – all a specialist can do if he or she witnesses a problem or a violation of the rules is find a supervisor and report it. Specialists play no role in the schedule and have no say in shift assignments. Time-off requests and sick call-ins go to supervisors only. There are no performance evaluations. Specialists play no part in assessments for promotional job bidding.

Specialists take attendance at the beginning of the shift, but, according to the Employer's witnesses, merely report it. They are given no discretion to ignore or excuse absences or tardies. Hilas at least tells other employees in the fabrication department to help out in other departments, particularly painting and packing. She testified that she is merely communicating orders from higher up, and in any event such directions appear routine responses to lack of work in fabrication or backlogs in the other departments.

The specialists have broader responsibility than the typical rank-and-file employee. It seems clearly, however, in the nature of minor instructions based on skill and experience, not independent judgment. They are primarily a conduit for orders from

higher up, and any problems they encounter must be taken higher up for resolution.

There is no time during which department supervisors are not on duty to help or direct the specialists. This is not supervisory authority. E.g., Mt. Sinai Hospital, 331 NLRB 895, 902 (2000), enfd. 8 Fed.Appx. 111 (2d Cir. 2001); Dino & Sons Realty Corp., 330 NLRB 680, 688 (2000), enfd. 37 Fed.Appx. 566 (2d Cir. 2002); Hausner Hard-Chrome, Inc., 326 NLRB 426, 426-427 (1998).

What does Petitioner offer to supplement or counter this? With regard to King, virtually nothing. Besides the Employer's evidence that King shares typical lead person duties described above with the other specialists, the only further evidence offered by Petitioner's witnesses specifically concerning King was testimony that she occasionally wears a white shirt with an Alcoa logo on it. The Employer's human resources specialist testified that the Employer gives out several shirts, a white one and a denim one with logos, and anyone, supervisor or rank and file, is free to wear them or not. Petitioner's witnesses' testimony that they thought the white shirts designated supervisory status does not really rebut that. Accordingly, King is clearly not a supervisor.

P.J. Lowers has been classified on the payroll as leader TAS for an unknown but lengthy period, probably over a year. The Employer's witnesses explained that as a means of giving Lowers a pay increase for responsibility she has taken on to implement and troubleshoot an Oracle computer program for tracking production statistics. They testified that Lowers spends almost all her time on the computer and really doesn't direct any "subordinates," even to the extent the other specialists do. Although Petitioner's witnesses described Lowers' duties as similar to Hilar's, one of them did not work in Hilar's department and the other three had all been terminated more than 10

months before the hearing. Accordingly, I find the Employer's evidence about Lowers' recent responsibilities un rebutted and conclude Lowers is not currently a supervisor.

Petitioner argues that the attendance list the specialists keep is a "write-up." One Petitioner witness, Furlong, testified that once she was late, and Lowers asked her if she was late. She subsequently observed other employees arrive late and not get "talked to" like that. Another Petitioner witness, Hammercheck, testified that once Hilar told him to watch his tardies or he was going to get in trouble.

Petitioner contends that is disparate, i.e., discretionary, "discipline." There is no evidence, however, that the specialists have any responsibility to keep track of tardiness or absence to administer the absentee policy. Even if they did, the absentee policy was described as a point system with progressive discipline automatically applied for specific accumulation. These inane comments evidence neither any substantial disciplinary consequence, nor independent judgment. The only real "write-ups" in evidence, titled disciplinary warnings, are signed only by Rish as supervisor, and there is no hint on them that specialists had anything to do even with reporting the incidents that led to the warnings.

Petitioner witnesses testified that Hilar and Lowers yelled at them when they weren't working fast enough, and they were afraid of Hilar and Lowers. Tellingly, however, the only further consequence any Petitioner witness speculated on for incurring the wrath of Hilar or Lowers was Furlong's testimony that she might get sent to the department supervisor for further action.

Petitioner also argues that temporary transfers to other departments and overtime assignments demonstrate responsible direction of work. Regarding

department transfers, Hilas testified that all such directions are given to her by a supervisor. Lowers did not testify. All Petitioner's witnesses could say to that was, sometimes they didn't see any department supervisors in the area at the time these instructions were given. Petitioner witness Furlong also conceded that scaler Debbie St. John gave her similar orders, and St. John is not alleged as a supervisor.

Hilas and Lowers have occasionally told employees to delay a break or their lunch period to fill a pressing order. Hilas and Lowers passed out and collected volunteer sign-ups for overtime, but there is no evidence they had anything to do with deciding whether overtime was needed or how many people got it. Furlong testified that the only mandatory overtime she ever saw was assigned for entire departments, by memo posted by the office, although she couldn't say who originated the memo. On the other hand, Furlong and Heidbrider for Petitioner said one time (neither said when) Lowers ordered them to finish an order before they could leave, they worked 20 minutes overtime, and they never got paid for it. There is no evidence they complained, either. See Intrepid Museum Foundation, Inc., 335 NLRB 1, 13 (2001) (single incident sending employee home without pay too sporadic to establish supervisory status). I find no evidence that specialists exercise independent judgment in assignment of overtime.

The Employer concedes Lowers' computer assignment is temporary. It expects Lowers to return to specialist duty, but the computer assignment has already taken longer than originally planned, and it offered no predicted deadline. Even assuming Lowers were to return to a specialist position equivalent to Hilas' in deed as well as title, at a reasonably imminent date, I would not find that supervisory either.

I conclude that Petitioner fails to carry its burden of proving that any specialists, specifically Hilas, Lowers, or King, are supervisors within the meaning of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including ABS clerks, leader (TAS), and specialists, employed at the Employer's Warren, Ohio, facility; excluding office clerical employees, professional employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION³

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who

³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 27, 2004**.

have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION OF ELECTRICAL WORKERS, INDUSTRIAL DIVISION – COMMUNICATION WORKERS, AFL-CIO, DISTRICT 7.**

Signed at Minneapolis, Minnesota, this 13th day of December 2004.

/s/ Ronald M. Sharp

Ronald M. Sharp, Acting Regional Director
Region Eight
National Labor Relations Board
1240 East 9th Street, Room 1695
Cleveland, OH 44199-2086

⁴ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Cleveland Regional Office, 1240 East 9th Street, Room 1695, Cleveland, OH 44199-2086, on or before close of business **December 20, 2004**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.